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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. SHAWN LAWRENCE PUTANSU, Defendant and Appellant.	G039008 (Super. Ct. No. 06CF3384) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, William R. Froeberg, Judge. Affirmed.

Mark L. Christiansen, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Pamela Ratner Sobeck and Jennifer A. Jadovitz, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted appellant Shawn Putansu of first degree murder and found true a special circumstances allegation he accomplished the murder by means of poison, to wit, cocaine. On appeal, he argues the prosecution did not prove the corpus delicti of murder, and the trial court made a variety of errors throughout the course of the case. Finding appellant's arguments unmeritorious, we affirm the judgment.

FACTS

Appellant has a long history of drug abuse. While living in Portland, Maine in 2002, he regularly used cocaine and methamphetamine with Jane Brewer. Brewer testified that one time after she, appellant and Cynthia Day used cocaine together, she took Day to her apartment and gave her some methadone to help her "come down." Day passed out, and the following morning, Brewer discovered she was dead. No charges were filed in connection with that matter.

In the wake of Day's death, appellant moved to Orange County, and in the spring of 2005, he met Melissa Mitchell, a criminal defense attorney who struggled with drug addiction. She and appellant used cocaine together, and sometimes when they did, appellant would inject the drug into Mitchell's arms and hands. One time, this caused Mitchell to "fish out," as if she were having a seizure, but appellant was able to "bring her back" without incident. Although appellant liked doing drugs with Mitchell and hanging out at her house in Laguna Niguel, he told people he did not want to be her boyfriend.

On May 20, 2005, appellant and Mitchell used cocaine together before meeting their friend Andres Calvo at an Orange County nightclub. Mitchell also used cocaine at the club with Calvo's date. When closing time came around, appellant and Mitchell departed for Mitchell's house. Calvo did not notice any problems between them when they left.

The next day, at around 10 a.m., police officers responded to a call about a "possible jumper" at a Los Angeles high-rise building where Mitchell kept an apartment. They found appellant on the roof of the building, walking about naked in an agitated manner. Appellant told the officers he would jump if they got close to him, so they kept their distance and tried to calm him down.

Delgado Garcia was one of the officers on the scene. He told appellant he could help him out, but appellant was rather doubtful, saying, "I'm going to end up in prison. I'm a psycho murderer." He also said he had injected Mitchell with cocaine and knew she was going to die because the cocaine was very strong. Explaining his motive, appellant said he hated Mitchell and was envious of her because she was rich.

Appellant also spoke with Officer Deon Joseph. At one point during their conversation, appellant ran toward the edge of the roof as if he were going to jump off, but at the last second he grabbed a pole and stopped himself. Appellant said he had given Mitchell an overdose, and he had done the same thing to another woman in 2002. Joseph told him it wasn't the end of the world and asked where Mitchell was. Appellant said, "I'm not telling you, but I did it. It's my fault. I did it on purpose." When Joseph told him it could have been an accident, appellant replied, "No, it wasn't." He said he shot up Mitchell with two doses of cocaine and then watched her have a seizure and drown in a Jacuzzi.

During the ordeal, the police gave appellant a cell phone, and he made several calls to his friends in Maine. He told them he killed Mitchell on purpose by giving her "too much coke" because he was jealous of her. He also said he was feeling "homicidal and suicidal" and "about to die." In talking with Calvo, he said after he shot up Mitchell, she overdosed in her Jacuzzi; then he drove her car to her Los Angeles apartment, where he ingested opiates and cocaine.

While the standoff was in progress, the police searched Mitchell's apartment unit and found a baggie of marijuana and smoking paraphernalia, but they did not find any evidence of cocaine use. Mitchell's car was found on the street, in front of the apartment building.

After talking with appellant for several hours, the police eventually convinced him to surrender. A blood sample taken from him sometime after 6 p.m. revealed he had cocaine and morphine in his system.

In response to appellant's rooftop statements, the police went to Mitchell's home, where they found her floating face-down in her backyard Jacuzzi. A syringe and plastic baggie were floating in a nearby pool, and inside Mitchell's home the police found more syringes and other cocaine paraphernalia. Appellant's and Mitchell's fingerprints and DNA were found on several of these items, but the syringe found in the pool did not yield any identification information.

An autopsy revealed Mitchell died of acute cocaine intoxication. She had recent needle puncture wounds on her hands and arms and lethal amounts of cocaine in her blood and brain tissue. The coroner believed she died within two hours of being injected.

The primary witness for the defense was Dr. Frank Gawin, an expert on the behavioral effects of cocaine use. He testified cocaine can induce psychotic delusions in some people, including the false belief they have done something wrong. Dr. Gawin explained that when a person is having a delusion of this sort, they may make incriminating statements that are not necessarily true. However, Dr. Gawin admitted that not everything a person says in the course of a cocaine-induced delusion is unreliable. Having reviewed the records in this case, Dr. Gawin was of the opinion that appellant's behavior on the roof of Mitchell's apartment building was consistent with a person who was having a cocaine-induced delusion.

Character witnesses formed the other component of appellant's defense. Several of his friends and relatives testified they knew him as a kind, considerate person who was not prone to jealousy or violence.

The prosecution proceeded on two theories of first degree murder, premeditation and murder by poison. It also alleged a special circumstances allegation that appellant intentionally killed Mitchell by the administration of poison. The defense argued appellant's rooftop confession was the unreliable product of a cocaine-induced delusion that he killed Mitchell. It theorized Mitchell actually overdosed by accident and appellant falsely believed he was responsible for her death. However, the jury convicted him of first degree murder and found the special circumstances allegation to be true. The court sentenced him to life in prison without the possibility of parole.

I

Appellant contends that, apart from his own statements, the corpus deliciti of murder was not established by sufficient evidence. We disagree.

"'The corpus delicti of a crime consists of two elements, the fact of the injury or loss or harm, and the existence of a criminal agency as its cause.' [Citation.]" (*People v. Jennings* (1991) 53 Cal.3d 334, 364.) The law requires these elements to be proven independently of the defendant's statements. (*People v. Ledesma* (2006) 39 Cal.4th 641, 721.) However, "the quantum of evidence required is not great, and 'need only be "a slight or prima facie showing" permitting an inference of injury, loss, or harm from a criminal agency . . . .' [Citation.] 'The inference [that a crime has been committed] need not be "the only, or even the most compelling, one . . . [but only] a *reasonable* one."' [Citation.]" (*Id*. at p. 722.) In other words, the proof necessary to establish the corpus deliciti of an offense will be deemed sufficient so long as "it permits an inference of criminal conduct, even if a

noncriminal explanation is also plausible. [Citations.]" (*People v. Alvarez* (2002) 27 Cal.4th 1161, 1171.)

While admitting this is not a high standard of proof (it is, indeed, *remarkably* low), appellant argues there is not "even the slightest evidence to show [Mitchell's] death was by criminal means," as opposed to accident or mistake. This is not quite accurate. The evidence established Mitchell died from acute cocaine intoxication. There were recent needle puncture wounds on her hands and arms, which is where witnesses had seen appellant inject her with cocaine in the past. And appellant's fingerprints and DNA were found on much of the cocaine paraphernalia found in Mitchell's home. The evidence also indicated appellant drove Mitchell's car to her Los Angeles apartment after she died, which could be viewed as indicative of foul play. (Pen. Code, § 1127c [jury may equate defendant's flight with consciousness of guilt].) And while appellant was on the roof of the apartment, he came very close to jumping, which is consistent with the theory he murdered Mitchell. (*Canady v. Commonwealth* (Va. 1973) 200 S.E.2d 575 [citing defendant's suicide attempt as part of the evidence that established corpus delicti of murder].) This is not much, but not much is required. There was sufficient proof apart from appellant's statements to allow "an inference of criminal conduct," and that establishes a corpus delicti under California law.

We are certainly sympathetic to appellant's disagreement with a law that allows a burden to be carried by evidence he feels is no more than equally likely to be attributed to criminal conduct as noncriminal conduct. But that is precisely the state of the law on this point. As long as some evidence could be viewed as indicative of criminal conduct, the "slight or prima facie showing" necessary to the introduction of his statements has been established. That is the case here; the jury was entitled to hear what he said.

II

Next, appellant contends the trial court improperly limited the testimony of his expert witness, Dr. Gawin. Although the court sustained objections to some of the questions the defense asked Dr. Gawin, he was ultimately allowed to give his opinion on the matters posed by those questions. Therefore, we reject appellant's contention the trial court unduly restricted his testimony.

Dr. Gawin is a psychiatrist and neuropharmacologist who has studied the way drugs, particularly cocaine, affect the brain and human behavior. Over the years, he has observed countless people while they were under the influence of cocaine and examined how they react to the drug. He said people usually experience a euphoric sensation when the drug first enters their system, but when that "high" starts to wane, they often experience anxiety, paranoia and depression. And in some cases, they may have psychotic delusions that impair their perception of reality.

As to the issue of delusions, defense counsel asked Dr. Gawin, "Is it consistent with cocaine psychosis to have a delusional belief that you're guilty of something that you're not guilty of?" Before Dr. Gawin could answer, the prosecutor objected to the question as calling for "speculation [and the] ultimate conclusion" in the case. The court sustained the objection.

Appellant contends the court's ruling was incorrect because Dr. Gawin was quite familiar with how people act while using cocaine, and as an expert witness, he was qualified to offer his opinion about the ultimate issues in the case. (Evid. Code, § 805.) But even if the court erred in sustaining the objection, appellant was not harmed by it because Dr. Gawin was fully allowed to address the issue of delusions in his subsequent testimony. In fact, he said he has seen many instances where cocaine users have expressed guilty feelings in response to a delusion they were experiencing. When asked if those delusions included the false belief the user had "done something horrible," Dr. Gawin answered yes. He also opined appellant's

rooftop behavior was consistent with a person who was having such a delusion. So, in the end, the defense was allowed to fully explore the concept of cocaine-induced delusions with Dr. Gawin *and* elicit his opinion appellant was acting like he was experiencing such a delusion when he was confessing to the police up on the roof. Although the court sustained *some* of the prosecutor's objections to questions in this area, on the whole, the defense could not reasonably have hoped for anything more than that.[1]

Defense counsel also asked Dr. Gawin, "Does cocaine have the effect of changing someone who is not a violent person into a violent person?" In objecting to this question, the prosecutor argued it lacked foundation and called for speculation, and the court agreed. Appellant takes issue with this ruling, but the question, as phrased, *was* without foundation as to appellant's history for violence, and asked not *if* cocaine could have such an effect, but whether it *did* have such an effect — a question which clearly called for speculation.

Nonetheless, Dr. Gawin was allowed to testify that while he has seen people under the influence act violently in response to delusions they perceived to be real (such as the false belief they were being attacked), he has never seen anything to suggest that, outside this particular context, cocaine makes nonviolent people behave in a violent fashion. Based on this testimony, and the lay testimony about appellant being a nonviolent person, the defense was allowed to get its point across that appellant's cocaine use on the night in question would not have been likely to transform him into a violent murderer. Therefore, any error in limiting Dr. Gawin's testimony in this area was surely harmless.

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[1] The only thing Dr. Gawin was prohibited from opining about was the specific subject matter of appellant's delusion. For instance, he was not allowed to give his opinion as to whether appellant was laboring under the delusion he was guilty of Mitchell's murder. But this limitation was proper because expert witnesses are not permitted to give their opinion about the defendant's specific mental state on a particular occasion. (*People v. Nunn* (1996) 50 Cal.App.4th 1357, 1364.)

III

Appellant also contends the court abused its discretion in excluding "an important part" of the basis for Dr. Gawin's testimony, i.e., what appellant told him during an interview before trial. Appellant argues this information was critical for the jury to gain a full understanding of Dr. Gawin's opinions, but because the evidence consisted solely of self-serving hearsay, we uphold the trial court's decision to exclude it.

Before trial, Dr. Gawin prepared a report in which he concluded appellant's rooftop statements reflected "a classic delusional misinterpretation of facts" stemming from his cocaine use on the night in question. In reaching this conclusion, Dr. Gawin relied not only on appellant's background and the facts of the case, but on what appellant told him during a pretrial interview. The prosecutor objected to the introduction of appellant's interview statements on the basis they were unreliable. More specifically, he asserted the defense "should not be allowed to introduce hearsay statements and self-serving statements of the defendant under the guise it goes to [Dr. Gawin's] opinion." (See *People v. Price* (1991) 1 Cal.4th 324, 416.)

The court agreed. It ruled that while Dr. Gawin could testify he relied on appellant's statements in forming his opinions, he could not mention the substance of those statements. Among other things, appellant told Dr. Gawin 1) he and Mitchell had their usual amount of cocaine on the night in question; 2) when they returned to her house from the nightclub, they talked about using the cocaine; 3) appellant warned her not to use too much because they were going to be in the Jacuzzi; 4) she injected herself while he was in the bathroom; and 5) he never injected her that evening.

"'When expert opinion is offered, much must be left to the trial court's discretion.' [Citation.] Although an expert may base an opinion on hearsay, the trial court may exclude from the expert's testimony 'any hearsay matter whose irrelevance,

unreliability, or potential for prejudice outweighs its proper probative value.' [Citation.]" (*People v. Pollock* (2004) 32 Cal.4th 1153, 1172.)

Like appellant here, the defendant in *Pollock* sought to introduce expert testimony to explain his actions while he was under the influence of cocaine. The trial court allowed the testimony for the most part, but it prohibited the expert from giving his opinion on matters that were based on what the defendant had told him during a pretrial interview. The Supreme Court upheld this ruling, finding defendant's pretrial statements were too "potentially self-serving and unreliable" to allow them into evidence "without defendant ever having testified and submitted to cross-examination[.]" (*People v. Pollock, supra,* 32 Cal.4th at p. 1172.)

The same can be said about appellant's pretrial statements in this case. Not only did he tell Dr. Gawin that Mitchell injected herself on the night in question, he also told him that he was worried about Mitchell using too much cocaine that evening. These statements were extremely self-serving and entirely antithetical to the prosecution's case. Yet, because appellant did not testify at trial, the prosecution would not have been able to challenge their reliability through cross-examination. Under these circumstances, the trial court acted well within its discretion in prohibiting the defense from eliciting these statements for the purpose of establishing the foundation of Dr. Gawin's opinions.

IV

Appellant asserts the court erred in reseating a juror after the defense successfully challenged his dismissal. But the defense agreed to this remedy, so there is no cause for reversal.

After the prosecutor used a peremptory challenge to dismiss Juror No. 7, one of two African-Americans on the jury panel, defense counsel objected to the dismissal as being racially motivated. The court sustained the objection and asked defense counsel what remedy she wanted. She said, "I don't know if he's still out

there (i.e., outside the courtroom). If he's not still out there, then the only remedy is to start over again. I think those are the two remedies. The court can either reseat him or start over."

At that point, the court took a brief recess. When proceedings resumed, it announced: "Despite our [best] efforts, apparently (Juror No. 7) has already left the building." In response to this, defense counsel said, "Then I'd ask to start over." The prosecutor was not particularly taken by this prospect. Since it was late in the day, he suggested that the court should try to get a hold of Juror No. 7 and order him to come back in the morning. Defense counsel questioned whether the court had the authority to order Juror No. 7 to come back, but she said, "I have no problem with the court contacting him and asking him and putting this over until tomorrow to see if he's willing to come back."

Later that afternoon, the court clerk contacted Juror No. 7 and put him on speaker phone in chambers, with the prosecutor and defense counsel present. The court asked him if he would be willing to return to court in the morning and serve on the jury, and he said yes. Then, to ensure the matter was properly reflected in the record, the court said it would be reseating Juror No. 7 because that was "the remedy sought by the defense." Defense counsel did not question the court's characterization of the proceedings, nor did she object in any fashion to having Juror No. 7 reseated on the jury.

When the defense successfully challenges a juror's dismissal as being racially motivated, the court may dismiss the remaining venire and start the jury selection process over again. (*People v. Willis* (2002) 27 Cal.4th 811, 823-824.) However, if the defense waives its right to a mistrial and chooses to have the dismissed juror reseated, the court should ordinarily honor that request. (*Ibid*.)

In this case, defense counsel initially told the court she would be content with either the mistrial or the reseating remedy. It was only when she thought Juror

No. 7 was no longer available that she narrowed her request to a mistrial. However, when the prosecutor suggested it, defense counsel said she had "no problem" with the court trying to reach Juror No. 7 by phone and asking him to come back. Defense counsel was present when this was done, and when the court announced it would be reseating Juror No. 7 as the remedy sought by the defense, defense counsel voiced no objection whatsoever. On this record, we are convinced the defense waived its right to a mistrial and consented to the reseating remedy that was employed by the court.

V

We now turn to appellant's instructional claims.[2] He asserts the court erred in failing to instruct the jury sua sponte on the defense of accident, but we perceive no error in this failing.

"The accident defense is a claim that the defendant acted without forming the mental state necessary to make his actions a crime." (*People v. Gonzales* (1999) 74 Cal.App.4th 382, 390.) The defense applies only "when it appears that there was no evil design, intention, or culpable negligence" attendant to the defendant's actions. (Pen. Code, § 26.) When, as here, the defendant fails to request an accident defense instruction, the trial court is not required to give one unless there is substantial evidence the defense applies. (*People v. Salas* (2006) 37 Cal.4th 967, 982.)

While it is *possible* Mitchell's death was an accident, there was not substantial evidence to support this theory. Even before the police found Mitchell's body, appellant confessed he intentionally killed her by giving her too much cocaine.

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[2] The Attorney General contends appellant waived these claims because he did not raise them in the trial court. However, because appellant alleges the court's instructional errors infringed his substantial rights, and his attorney was ineffective for failing to object to the errors, we will consider his instructional claims on their merits. (Pen. Code, § 1259; *People v. Anderson* (1994) 26 Cal.App.4th 1241, 1249 [despite lack of objection at trial, appellate court may assess merits of instructional claims to determine whether appellant's substantial rights were affected]; *People v. Williams* (2000) 78 Cal.App.4th 1118, 1126 [addressing issue that was arguably waived by appellant's failure to object "to forestall a petition for writ of habeas corpus based on a claim of ineffectual counsel"].)

He told this to a number of people, and in each telling, he recounted the same basic facts and readily admitted his murderous intent. He also provided a motive for his actions, saying he killed Mitchell because he was jealous of all the things she had. And, when it was suggested to him Mitchell's death may have been an accident, he bluntly replied, "No, it wasn't." Although the defense tried to show appellant's statements were unreliable, we do not believe there was substantial evidence Mitchell's death was an accident. Therefore, the trial court did not err in failing to instruct on that defense.

Even assuming otherwise, a reversal would not be required because, in finding the special circumstances allegation true, the jury found appellant acted with the specific intent to kill. (See CALCRIM No. 734, discussed more fully below.) Since the accident defense applies only when the defendant lacks a criminal intent or purpose, this finding was fatal to the success of that defense. Therefore, any error in failing to instruct on accident or mistake was harmless. (*People v. Jones* (1991) 234 Cal.App.3d 1303, 1315-1316 [failure to instruct on defense of accident deemed harmless where jury found under other properly given instructions defendant acted with the intent to kill].)

VI

On the second day of deliberations, the jury asked the judge in a note if there were "any additional guidelines for special circumstances of poison other than poison was administered?" After counsel were notified of the question, the judge told the jury, "The elements of murder by poison are set forth in jury instructions 521 and 734. If you have further questions you need to be more specific."

Appellant contends this response was inadequate and misleading because it failed to apprise the jury that the intent to kill is a necessary element of the special circumstance of murder by poison. But CALCRIM No. 734, to which the court referred the jury, properly explained that in order to prove the special

circumstance allegation of murder by poison, the People had to prove appellant "intended to kill Melissa Mitchell." There is nothing unclear or misleading about that.

Nevertheless, appellant argues the court clouded the issue by referencing CALCRIM No. 521. That instruction explained, "The defendant is guilty of first degree murder if the People have proved the defendant murdered by poison." First degree murder by poison is distinct from the special circumstance of murder by poison in that it does not require the intent to kill. (See *People v. Catlin* (2001) 26 Cal.4th 81, 158.) Therefore, if the jury used the quoted language in CALCRIM No. 521 in adjudicating the special circumstance allegation, it could have found the allegation true without making the requisite finding appellant possessed the intent to kill.

However, it is not reasonably likely the jury confused the instructions in this fashion. CALCRIM No. 734 defined the elements of the murder by poison allegation and was clearly labeled as an instruction on "special circumstances," while CALCRIM No. 521 was geared toward explaining the different degrees of murder. Even though the court referenced both instructions in answering the jury's question about the special circumstances allegation, we agree with the Attorney General that the jury would have known the two instructions "addressed different aspects of the charge." And with respect to the special circumstances allegation, CALCRIM No. 734 could not have been clearer in terms of explaining to the jury that the intent to kill was a necessary element of that particular aspect of the charge. The prosecutor also reminded the jury of this in his closing argument. So, when we look at everything the jury was told, we do not believe it would have been misled or confused on this point. We therefore reject appellant's claim to the contrary.

VII

Appellant voices an analogous concern with respect to the court's instruction on the lesser included offense of involuntary manslaughter. Specifically, he fears the jury may have used a definition applicable only to that instruction in assessing the charge of first degree murder by poison and the murder by poison special circumstances allegation. However, considering the court's charge as a whole, we do not believe it is reasonably likely the jury applied the court's instructions in this way.

With regard to the special circumstances allegation, the trial court explained to the jury that the People were required to prove appellant intended to kill Mitchell "by the administration of poison." (CALCRIM No. 734.) And under the court's instructions on first degree murder by poison, the People were required to prove appellant committed murder "by using poison," which the court defined as "a substance, applied externally to the body or introduced into the body, that can kill by its own inherent qualities." (CALCRIM No. 521.)

The court also instructed on involuntary manslaughter as a lesser included offense of murder. In so doing, the court told the jury involuntary manslaughter requires the commission of a crime that poses a high risk of great bodily injury because the way in which it was committed. The court further instructed that the crime alleged in this case was administering cocaine in violation of Health and Safety Code section 11352, which the court defined for the jury.[3]

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[3] Specifically, the court instructed the jury, "In order to prove that the defendant is guilty of administering cocaine, a violation of Health and Safety Code section 11352, the People must prove that:

"1. The defendant administered a controlled substance.

"2. The defendant knew of its presence.

"3. The defendant knew of the substance's nature or character as a controlled substance.

"4. The controlled substance was cocaine.

"And, 5. The controlled substance was in a usable amount.

"A person administers a substance if he applies it directly to the body of another person by injection, or by any other means or causes the other person to inhale, ingest, or otherwise consume the substance.

Appellant contends the elements of the crime of administering cocaine were too broad to be applied to the charges of first degree murder by poison and special circumstances murder by poison, but because the administration of cocaine was a component of those charges, the jury may have looked to those elements in deciding whether those charges were proven. In other words, he worries the jury may have used the elements of the crime of administering cocaine to find him guilty of murder by poison and to find true the special circumstances allegation of murder by poison.

We think that highly unlikely. The very first thing the court told the jury about involuntary manslaughter was that it is "[a] lesser crime to murder." The court then explained the difference between murder and involuntary manslaughter before proceeding to inform the jury that the offense of administering cocaine was the offense upon which the charge of involuntary manslaughter was based. These instructions properly informed the jury the elements of administering cocaine were relevant only to the theory of involuntary manslaughter. And because there is no indication to the contrary, we must presume the jury understood this limitation and applied the court's instructions as directed. (*People v. Lewis* (2001) 26 Cal.4th 334, 390.) No instructional error has been shown.

VIII

At the prosecution's request, the court gave CALCRIM No. 625, which states: "You may consider evidence, if any, of the defendant's voluntary intoxication only in a limited way. You may consider that evidence only in deciding whether the

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"A useable amount is a quantity that is enough to be used by someone as a substance. Useless traces are not usable amounts. On the other hand, a usable amount does not have to be enough in either amount or strength to affect the user.

"The People do not need to prove that the defendant knew which specific controlled substance he administered, only that he was aware of the substance's presence and that it was a controlled substance.

"A person does not have to actually hold or touch something to administer it. It is enough if the person has control over it or the right to control it, either personally or through another person." (See CALCRIM No. 580.)

defendant acted with an intent to kill, or the defendant acted with deliberation and premeditation. [¶] . . . [¶] You may not consider evidence of voluntary intoxication for any other purpose."

Appellant contends the instruction was improper because it prevented the jury from considering his intoxication in assessing the reliability of his rooftop admissions. Not so. Appellant argued to the jury that his rooftop statements were the unreliable product of a cocaine-induced delusion, and therefore he did not kill Mitchell in an intentional and premeditated fashion. In that sense, the rooftop statements were directly relevant to the issues of intent to kill and premeditation. And because the court's instruction allowed the jury to consider the effect of voluntary intoxication on these issues, it follows that the jury considered the effect of voluntary intoxication in assessing the reliability of appellant's statements.

After all, that is precisely what defense counsel urged the jury to do in closing argument, and neither the prosecutor nor the court hindered counsel's argument in this regard. Rather, it was rightly assumed that the argument was fair game in light of Dr. Gawin's testimony on the effects of cocaine. While the prosecutor disagreed with some of Dr. Gawin's opinions, he did not contend the jury should disregard appellant's intoxication in evaluating the credibility of his statements. And since the credibility of his statements bore directly on the issues of intent to kill and premeditation, the challenged instruction on voluntary intoxication was properly given.

IX

At sentencing, the trial court ordered appellant to pay a court security fee of $20 payable through the Department of Corrections and Rehabilitation. While appellant admits the fee was authorized under Penal Code section 1465.8, he claims its collection should be administered by the trial court, not through the prison system.

However, appellant did not object to the fee on any basis at the time it was imposed. Therefore, his claim has been waived. (*People v. Scott* (1994) 9 Cal.4th 331, 354 ["claims deemed waived on appeal involve sentences which, though otherwise permitted by law, were imposed in a procedurally or factually flawed manner"]; *People v. Valtakis* (2003) 105 Cal.App.4th 1066, 1068 [defendant waived his right to challenge statutorily-required probation fee by failing to object to it in the trial court].) No cause for reversal has been shown.

DISPOSITION

The judgment is affirmed.

BEDSWORTH, ACTING P. J.

WE CONCUR:

MOORE, J.

ARONSON, J.